

IN SENATE  
OF  
THE UNITED STATES,

FEBRUARY 12, 1818.

The managers on the part of the Senate have met and conferred with those on the part of the House of Representatives, on the subject of the disagreeing votes of the two houses upon the bill, entitled "An act making appropriations for the military service of the United States for the year 1818," and

**REPORT:**

That the conferees of the House of Representatives commenced the conference by stating, that "by the construction of the law of 1812, which the committee of the House of Representatives believe to be adopted by that house, the pay of a brevet commission is due only when the officer exercises a command, to which his lineal rank would not entitle him. To such command, under the President's general order of 1816 and 1817, he may be assigned upon special and temporary occasions." It is believed, from the amendment proposed by the Senate, that their construction is not very different from this. The construction of the War Department, however, is very different. The committee of the House of Representatives consider it wrong to explain or amend any act, by which salaries or pay is regulated by the provisions of an appropriation law. But if it were right, the short debate which occurred in the House of Representatives on the Senate's amendment, sufficiently proves, that the adoption of that amendment might change a little the ground of argument, but would not terminate the controversy.

As an amendment of the law of 1812, the provision proposed by the Senate, is, therefore, unsatisfactory; and to insist upon an appropriation previous to an amendment, is to insist either that the one body shall conform its appropriations (not to its own construction of existing laws, but) to that of the other body, or that both shall adopt, what both believe to be erroneous, the construction of the executive government.

The committee of the House of Representatives believe, that respect for the rights of both houses, requires that the act of 1812 should be amended, by defining more precisely the contingencies in which brevet pay shall be due; or if this be impracticable, by authorizing it in all cases, or in none. The bill which passed the House of Representatives at its last session, may explain the amendment, which it then preferred; but it

now insists only, that the amending law should first determine to whom pay is due, before an appropriation should be made for its payment.

The committee of the House of Representatives consider it necessary to fair and free legislation, that appropriations, in regard to the propriety or the extent of which the two houses find, after deliberation, that they still differ, should be separated from those, which both consider as necessary to the public service. If either branch of the legislature determine, that it will not make the great mass of necessary appropriations, while there remains one unprovided for, which it considers to be proper, it throws upon the other branch the necessity of concurring in an appropriation, which it may believe, that neither the law nor the public interest requires, or of endangering all the appropriations of the government. The committee of the House of Representatives hope, that the appropriations, which both houses deem necessary, will be made; and that the appropriation for brevet officers, which the Senate suggests, will be left to be provided for, when an amendment to the act of 1812 shall determine what that appropriation ought to be.

The conferees, on the part of the Senate, admitted that doubts might exist, as to the proper construction of the act of 1812, allowing pay to brevet officers, and that it might be found expedient to remove such doubts, by an explanatory law, defining, more precisely, the contingencies in which such pay should be allowed; but as, according to the construction given that law, by the House of Representatives, as stated by their conferees, which accords, substantially, with that contained in the Senate's amendment, expenditures, to a certain extent, would be legally authorized under it, and must be supposed to have taken place, and to continue to take place, until the law shall be altered. The conferees of the Senate were of opinion that an appropriation sufficient to cover such probable expenditure, ought now to be made, without waiting for the passage of such explanatory law. They did not think such law should be made to have a retrospective operation, so as to affect expenditures legally incurred before its passage; nor could they perceive how the passage of such a law could be deemed necessary to determine the propriety of making an appropriation to meet an expenditure which it could not regulate. They admitted, that, generally, it would not be the most correct course to amend a law establishing salaries, or authorizing an expenditure, by a provision in a general appropriation law, though they believed there was no constitutional or legal objection to such a course; but they stated further, 1st. That the Senate's amendment was not designed as an alteration of the law of 1812, but only expressing the construction of that law, which appeared to the Senate the correct one, and restricting the sum appropriated to the discharge of expenditures incurred pursuant to such construction; which, it is presumed, may be done on the same principle that other specific appropriations are made applicable to the objects designated, and to no other. 2d. If the objection be to the words in the Senate's amendment, which restricts the application of the sum appropriated to services performed by brevet officers, when acting in their brevet rank, the conferees of the Senate would agree to strike out those words, and have the sum appropriated applicable to services performed by such officers generally, agreeably to the terms of the estimates. Though the conferees of the Senate were willing to admit, that generally, it would not be advisable to embarrass a measure, em-

bracing the mass of appropriations deemed necessary, by insisting on one of a doubtful nature, they did not consider the argument as in any degree affecting the present case, the appropriation insisted on by them not being doubtful in its nature, because, according to any fair construction that can be given the law of 1812, and adopting that preferred by the House of Representatives, some expenditure is authorized and must be presumed to take place under it, before an explanatory law can be passed; and an appropriation to meet such expenditure did not appear to them of a doubtful nature, and on such alone they insisted. It appeared also to the conferees of the Senate, that the construction given the law for several years, by the government, and acquiesced in by the Congress, allowing brevet officers such pay as is now asked, gave those officers reasonable ground to expect a continuance thereof, so long as the law continued in force; and as the expenditure now proposed to be provided for did not arise out of any new construction of the law, and had, at least in part, already accrued, they considered it the duty of the two Houses to provide for it in the general appropriation law, and not leave it to be provided for in an act which may or may not pass; and they could see no ground for postponing the appropriation now insisted on by them, that would not equally apply to any other asked for, to meet an expenditure already incurred, under any law that it might be suggested required amendment.

The conferees of the Senate stated explicitly, they would not insist on making at this time, any appropriation with a view of coercing an expenditure which should accrue subsequent to the period at which an explanatory law relating to the matter in question could be supposed to pass, and which might, therefore, be either authorized or controled by such law, and though the sum requisite to meet the expenditures that must accrue under the existing law before it can be altered, could not be exactly ascertained, it might be estimated with nearly the same accuracy that sum; for other objects are, and therefore its uncertainty appeared to them to form no solid objection to the measure.

For the purpose, therefore, of providing for such expenditure alone, as must in any event take place, and leaving the two Houses to act in regard to the subject in future, as each should consider correct, without being considered in any manner compromised by the appropriation that might now be made, and anxious to reconcile, as far as practicable, the views entertained by both Houses on this subject, by meeting those of the House of Representatives, as far as in their opinion a due regard to correct legislation, and the duty they owe the Senate would authorise, the conferees of the Senate proposed, if the conferees of the House of Representatives would agree thereto, to modify the Senate's amendment so as to read as follows:

For additional pay, rations, and forage, to officers having brevet commissions, when commanding separate posts, districts, or detachments, requiring them to act in their brevet rank during the months of January February, and March, of the present year, nine thousand dollars.

The conferees of the House of Representatives refused to agree to this proposal, and as they neither proposed nor suggested any modification of said amendment, to which they would give their assent, the conference, after being continued as long as there was any prospect of arriving at a favorable result, terminated without the conferees of the two Houses being able to come to any agreement on the subject thereof.

